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Monday
August 16, 1982

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice; Final Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final rule and effective date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJDP) is giving notice that its final rule published at 47 FR 21226, May 17, 1982, and the stayed portion of § 31.303(i)(3)(iv)(B) published in the **Federal Register** of June 30, 1982, 47 FR 28546, has been modified and will be effective August 16, 1982. OJJDP had requested further public comments on the stayed clause of the regulation which resulted in its modification. The regulation implements the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, establishing a basic framework within which non-criminal juvenile offenders who violate valid court orders may be placed in secure facilities.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531, Telephone: (202) 724-5911.

SUPPLEMENTARY INFORMATION: On June 30, 1982, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** a "Confirmation of Effective Date in Part and Stay of Effective Date in Part." OJJDP requested comments on one portion of its regulation to implement the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The regulation is § 31.303(i)(3) of 28 CFR, Part 31 (Appendix A), which implements the formula grant program established by the Act. The portion for which additional comments were sought is § 31.303(i)(3)(iv)(B), which establishes the conditions under which a juvenile *accused* of violating a valid court order may be held in secure detention after a judicial determination has been made, based on a hearing, that there is probable cause to believe the youth violated the court order. Prior to this modification, the first clause of § 31.303(i)(3)(iv)(B) provided the following two circumstances under which detention pending a violation hearing would be sanctioned.

(B) the juvenile has a demonstrable recent record of willful failure to appear at family court preceedings *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others.

The OJJDP received 75 written comments from private citizens, private not-for-profit organizations, State and local public agencies and national organizations and associations. All comments have been considered by the OJJDP in adopting the final rule for the Valid Court Order provision.

Discussion of Comments

The central issue related to the subject clause was whether the limitation on judicial authority to place a status offender charged with a violation of a valid court order in secure detention was consistent with the amended Statute, section 223(a)(12)(A) of the Act, and its legislative history.

The majority of commentators recommended retention of the two conditions stressing that abandoning them would weaken the deinstitutionalization thrust of the Act. In addition, it was argued that the legislative history of the amendment indicated that Congress wanted the exception applied sparingly for those chronic status offenders who "continually flout the will of the court."

Comments from judicial associations recommended that the conditions to permit detention of an alleged violator beyond the 24-hour grace period should be reflective of the plain language of the amendment or be increased to cover other circumstances reflected by State law. First, courts must be provided with the ability to authorize detention of the juvenile if: (1) There is reason to believe that the juvenile may abscond and not appear at hearings, and (2) for protective purposes such as when the juvenile seeks the protective intervention of the court or may be a danger to himself or others or when no parent, guardian, or custodian can be found for the juvenile. In the first case, it is pointed out that chronic and habitual runaways may appear at court hearings, but not abide by court ordered non-secure placement or other orders of the court. By retaining this authority the court will be able to enforce their orders and provide needed services to the chronic status offender who has failed to accept non-secure treatment. Protective intervention of the court would be used in limited instances to provide protection to a juvenile who may need some form of protection from outside community factions. In the second instance, "protective" purposes were anticipated by the drafters of the amendment to enable courts to fulfill their basic statutory purpose.

OJJDP has determined that the proposed limits to detention circumstances lacked a substantive legal basis. It was concluded that the commentary of the judicial organizations is in keeping with the plain reading of the statute which provides an exception for all juveniles "charged with" violation of a valid court order and would address needed judicial discretion for enforcing valid court orders. It is believed that the reference to "protective purposes" and assurance of "appearance" in Subsection (iv) is consistent with the purposes of the statute and consistent with administration policy to implement legislation in as simple manner as possible with a concern to its effects on existing State law. Subsection (iv) basically covers situations where a judge has reason to believe, based on a record of failure to appear at a family court proceeding, that the juvenile will not appear at a hearing; or, has reason to believe, based on a record of conduct resulting in physical injury to self or others, that the juvenile may be a danger to self or others; or, that the juvenile is a habitual or chronic runaway who will not appear at the violation hearing or remain in non-secure placement; or, where the juvenile requests the protective custody of the court; or, where no parent, guardian, or custodian can be found who is willing to provide proper supervision.

While few commentators specifically suggested that any of these circumstances are inappropriate, an underlying theme was expressed which emphasized limited use of the authority granted in the amendment. We are aware of no other circumstances, permitted by State law, which are relevant to the amendment or under which this authority would be properly exercised. However, laws and procedures change and individual cases do not always fit into neat regulatory classifications. Consequently, the general "protective purpose" which is the purpose intended by the amendment is set out in Subsection (iv).

Section 31.303(i)(3)(vi) of the final portion of regulation addressed procedural requirements when judges enter any order that directs or authorizes placement in a secure facility. A clarification was requested to reflect that a separate action or statement that a "determination" had been made on the record was not intended.

All juvenile courts are "courts of record." The clause "on the record" has been eliminated since the determination will automatically be recorded in a court of record and the record will reflect the provision of due-process rights and elements of the order. Secondly, the clause "in the case of a violation hearing" is added to the last clause of the Section. This will require judicial determination of the least restrictive alternative at the time of violation hearings only which is the intent of section 223(a)(12)(B) of the Act from which this clause was drawn.

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, et seq., 28 CFR Part 31 is accordingly amended by adding a new § 31.303(i)(3) as shown in Appendix A.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

List of Subjects in 28 CFR Part 31

Grant programs, Law, Juvenile delinquency.

PART 31—FORMULA GRANTS

Section 31.303(i)(3) (iv) and (vi) are revised to read as set forth below. For the convenience of the user, we are reprinting the final rule as published at 47 FR 21226, May 17, 1982 and republished at 47 FR 28546, June 30, 1982, with the modifications discussed herein included.

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to his attorney and/or to his legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

John J. Wilson,

Acting General Counsel.

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